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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 569 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

BHAGWANJI VALLABHDAS

Appearance:

Mr. S.T. Mehta, APP for the appellant State.

MR RA BUDDHADEV for Respondents.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 16/07/1999

ORAL JUDGEMENT

The respondents came to be acquitted by the then learned Judicial Magistrate (F.C.) at Rajkot on 26th April 1989 of the offence punishable under Section 24 of the Contract Labour (Regulation & Abolition) Act of 1970. The State, being aggrieved by such order of acquittal, has preferred this appeal.

2. Necessary facts may, in brief, be stated. Mr. M.D. Sata was the Labour Officer at Rajkot. He had to supervise different factories and units covered by the Contract Labour (Regulation & Abolition) Act of 1970 (for short "the Act"). The respondent No.1 is a firm dealing in contract labour. The same is covered under Section

25. On 21st August 1986 at 10.15 a.m., when he visited the factory - the premises of opponent No.1, he found that the salary slip in Form No.19 was not given to the workers and over-time register was not maintained in Form No.23, the registers showing the particulars about the workers and the day from which the workers started to work were also not maintained along with their signature or thumb mark and thereby committed the offence under Section 24 of the Act. Rule 21, 78 and 72 enacted under the Act were thus found to have been violated and offence under Section 24 was found to have been committed. The Labour Officer sent the note of his inspection but that was not complied with. He was, therefore, constrained to file complaint against both the respondents in the lower court which came to be registered as Criminal Case No. 3165 of 1986. The learned Magistrate recorded the evidence. Appreciating the evidence before him, he found that the charge levelled against the opponents was not established. He therefore acquitted both the opponents on 26th April 1989. It is against that order of acquittal, the present appeal is filed.

3. Mr. Mehta, the learned APP, assailing the judgment, submits that though the evidence on record was cogent and convincing establishing the charge, the learned Judge fell into error in partly overlooking the same and partly misconstruing the same. The order of acquittal recorded by the lower court is therefore required to be quashed and the opponents may be convicted and sentenced qua the offences with which they are charged.

4. I have gone through the record and the Judgment rendered by the lower court. I see no justifiable reason to interfere with the order of acquittal. It is necessary for the prosecution to prove the charge beyond reasonable doubt. As alleged by the complainant, after the inspection was over, a note regarding the inspection was sent to the opponents for necessary compliance and rectification. After the receipt of the same, the opponents replied that they were not the contractors within the meaning of the Act and the Act was not applicable. When the complainant who inspected the factory received such intimation pursuant to the inspection note he sent, it was incumbent upon him to establish leading necessary evidence that the opponents were the labour contractors within the meaning of the Act and were bound to act as mandated by the Act.

5. It is pertinent to note that in this case except the complainant Mr. M.D. Sata, no one is examined and

necessary documentary evidence is also not produced. The evidence of the complainant, Mr. Sata does not throw light on the main issue as to whether the opponents are the contractors within the meaning of the Act. When pointedly a question was put up to him, he replied that he did not record the statements of the labourers he found working in the premises. He also admitted that opponent No.2 was not the contractor, but was the partner of opponent No.1. He did not take the copy of the partnership deed in order to show that opponent No.1 is the contractor dealing in loading and unloading work as alleged. In short, necessary materials throwing light on the proposition are not collected though available. When that is so, a bare word of the complainant, Mr. Sata cannot be accepted for the reason that had those documents been produced, the same would have shown the fact otherwise than what has been alleged against respondents. It is also pertinent to note that Mr. V.V. Joshi accompanied the complainant Mr. Sata when the factory was inspected. In support of one's own say Mr. Sata has not examined V.V. Joshi and no explanation is offered. If the party does not examine the witness though available in support of his say, the Court is entitled to infer every thing against the party. For these reasons, the learned Judge was perfectly right in holding that the prosecution failed to establish that both the opponents were the contractors within the meaning of the Act and they were in the result bound to maintain different registers as alleged and make the payment of wages as per the rules applicable. The order of acquittal, therefore, calls for no interference of this Court. The appeal, being devoid of merits, is required to be dismissed and is accordingly dismissed, maintaining the order of acquittal.

(rmr).